IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-01-2005

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 2172 of 2003
and
C.M.P. No. 16279 of 2003
-o-

1. Kannatti @ Ramasamy Gounder
2. Gopal ... Petitioners/Plaintiffs

Versus

1. Anai Gounder
2. V. Krishnan
3. V. Ramalingam
4. Gunasundari
5. Muthammal
6. Govindan
7. Gopal
8. Backiyam
9. Dhanam
10. Neelambal ... Respondents/Defendants

Revision under Article 227 of The Constitution of India against the order dated 22-08-2003 made in I.A. No. 682 of 2002 in I.A. No. 572 of 2002 in O.S. No. 133 of 2002 on the file of District Munsif cum Judicial Magistrate, Omalur.

For Petitioners : Mr. V. Bharathidasan
For Respondents : Mr. D. Shivakumaran for RR1 to 4
NA for RR 5 to 10

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ORDER

The Plaintiffs are the revision petitioners herein, who have filed the suit for permanent injunction. Along with the suit, the petitioners have filed I.A. No.572 of 2002 for interim injunction, which was granted exparte by the trial court on 10-10-2002, till 01-11-2002. On 20-10-2002, the petitioners have filed I.A. No. 682 of 2002 for police aid, which was dismissed by the trial court by its common order dated 22-08-2003 along with I.A. No. 572 of 2002 for interim injunction, however, this revision is filed only against the order of dismissal of the application for police aid.

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2. Both sides have not let in either oral or

documentary evidence before the trial court. On 10-10-2002, the trial court granted exparte interim injunction in I.A. No. 572 of 2002 till 01-11-2002. On 01-11-2002, the respondents entered appearance through their counsel and filed counter in the said I.A. No. 572 of 2002 in I.A. No. 682 of 2002. It was stated that on 11-10-2002, the respondents and their men prevented the petitioners from drawing water through Raja Vaikkal and on 14-10-2002 the respondents threatened the petitioners with dire consequence, with the result, an oral complaint was given by the petitioners on 14-10-2002 with the Omalur police station. The trial court found that in respect of the said allegations, the petitioners have not placed any iota of evidence; whereas, the respondents herein have denied all the averments made by the petitioners; the trial court further found that though the petitioners have stated in the affidavit filed in support of I.A. No. 682 of 2002 that in O.S. No. 192 of 1998 an application in I.A. No. 628 of 1998 was filed for interim mandatory injunction and the said application was allowed on 20-04-2000 with a direction to the respondents herein to restore Raja Vaikkal, but the said order was also not placed before it. It is also mentioned in the order of the trial court that an advocate commissioner has inspected Raja Vaikkal on 23-02-2003 and till that date the said Vaikkal was in disrepair condition, while so, the averment that the respondents herein have damaged the Raja Vaikkal are unbeleivable, besides it is impossible to use the said Vaikkal by the petitioners and draw water.

3. In this case, exparte interim injunction was granted by the trial court under order 39 Rule 1 and 2 CPC on 10-10-2002, till 01-11-2002. On 01-11-2002, the respondents herein entered appearance through their counsel and filed their counter.

4. Admittedly, there is no express provision in the code for the purpose of implementation. It cannot be said that the exercise of inherent power under Section 151 of CPC is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power of the Court and the Court can give appropriate direction at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the order in a lawful manner. Followed (Rayapati Audemma v. Pothineni Narasimham) AIR 1971 Andhra Pradesh 53 wherein in para-9 it was held thus:-

> "9. If the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties by the police authorities we feel that the civil courts can also give appropriate

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directions under Section 151 Civil P.C. to render aid to the aggrieved parties for the due and proper implementation of the order of Court. It cannot be said that in such a case the exercise of the inherent power under Section 151 Civil P.C. is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power of the Court and the Court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner.

5. The apex Court in the decision reported in (Padam Sen v. State of Uttar Pradesh) AIR 1961 SC 218 wherein it was held thus:-

"The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and, therefore, it must be held that the Court is free to exercise them for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature."

In the above case, their Lordships, with regard to the scope and ambit of inherent powers of the Court under Section 151 CPC held that in order to do justice between the parties or to prevent abuse of process of the Court, the Civil Court has ample jurisdiction to give direction to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the Court or exercise of a right created under orders of the Court.

6. In the decision reported in (Century Flour Mills Ltd., v. S. Subbiah and another) 1975 MLJ Volume II Page No.54, a full bench of this Court held in para-8 as follows:

"8. In our opinion, the inherent powers of this Court under section 151 of the Code of Civil Procedure are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will

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be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interest of justice....."

7. In view of the above, it is clear that under Section 151 CPC, directions can be issued to the police for the execution of the decrees or orders or to render aid to the aggrieved parties for due and proper implementation of the order of temporary injunction or a decree or permanent injunction granted by civil Courts.

8. In this case, the petitioners have sought for police aid by filing an application on 20-10-2002 based on the injunction granted on 10-10-2002, which was then in force upto 01-11-2002. On 01-11-2002, the respondents herein have entered appearance through their counsel and filed their counter setting out certain facts and denying the averments of the petitioners.

9. The trial court dismissed the application for police aid on two grounds namely the petitioner has not proved the averments against the respondents mentioned in the affidvit filed in support of the application and the second ground is that the respondents are unable to implement the order because the canal namely Raja Vaikkal was disconnected and in disrepair condition, hence it was not fit for drawing water.

10. It is to be remembered whether the Court can exercise its power to grant police aid automatically pursuant to the interim order granted already or apply its mind as to the necessity of police aid. Section 151 CPC says nothing in this code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. All such powers, as may be necessary to do right and to undo a wrong in the course of administration of justice constitute an inherent power of the Court. The inherent power are to be exercised by the Court in very exceptional circumstances for which the Code lays no procedure.

11. In the decision reported in (Manoharlal Chopra v. Rai Bahadur Rao Raja Sethi Hiralal) AIR 1962 SC 527, the Honourable Supreme Court held that inherent power has not been conferred on the Court, it is a power inherent in the Court by virtue of its duties to do justice between the parties before it.

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12. Rule 3A of Order 39 CPC contemplates that where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to

finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability. Rule 4 of Order 39 CPC provides for vacation of exparte injunction on the ground that a false of misleading statement had been made in the application for injunction. A further proviso had been added to the effect that where an injunction has been granted after giving to a party an opportunity of being heard, the order for injunction shall not be decided, varied or set aside on the application of that party except where such discharge, variation or cancellation is necessiated by the change in the circumstance or by reason of the hardship caused by it. When any party makes an application for discharge, variation or setting aside an exparte order, it is the duty of the Court to decide such objection raised to the passing of the injunction order.

13. When counter filed by the respondents is pending consideration or in the absence of valid evidence for granting police aid, it is not incumbent on the part of the civil Court to exercise its power under Section 151 CPC. It is not proper to enforce the interim order of injunction when its continuance is opposed by other side. As mentioned in the preamble, the injunction application was also dismissed by the trial court along with the application for police aid by its common order dated 22-08-2003. Hence, I hold that it is not automatic to grant police aid by exercising the power under Section 151 CPC pursuant to the exparte order of injunction granted. In this case, the reason for not granting police aid also assigned by the court below.

14. I am satisfied with the reasons assigned by the court below for dismissing the application for police aid. Hence, the revision is dismissed. No costs. Consequently, connected CMP is closed. Considering the facts and circumstance of the case, the trial court is directed to dispose of the suit on merits within a period of three months from the date of receipt of a copy of this order.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
The District Munsif cum
  Judicial Magistrate
District Munsif Court
Omalur, Salem District

+1cc to Mr.D.Shivakumaran Advocate Sr 2408

+1cc to Mr.V.Bharathidasan Advocate Sr 2488

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